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LegisBytes

Tax Treatment and Insolvency Provisions for Variable Capital Companies (VCCs) Formalised

On 3 September 2019, the Variable Capital Companies (Miscellaneous Amendments) Bill (“**Bill**”) was passed in Parliament. The Bill was introduced in Parliament on 5 August 2019. The Bill has yet to come into force.

The Bill sets out, among other things, provisions relating to the tax treatment for and the receivership and insolvency regime applicable to variable capital companies (“**VCCs**”).

VCCs

The Variable Capital Companies Act 2018 (“**VCC Act**”) was passed in Parliament on 1 October 2018. The VCC Act has yet to come into force. The VCC Act sets out a new legal framework for a VCC, which has features tailored for investment funds. These features include the ability to pay dividends using profit or capital. The shareholders of a VCC are the fund investors. A VCC must be managed by a fund manager that is regulated by the Monetary Authority of Singapore (MAS). In addition to being set up as a single standalone fund, a VCC may also take the form of an umbrella VCC structure. This enables a VCC to combine the advantage of a single legal entity at the umbrella VCC fund level, with segregation of assets and liabilities at the sub-fund level. We understand that the VCC framework is expected to be in effect at the end of 2019.

Tax treatment for VCCs

The Bill will amend the Income Tax Act, the Goods and Services Tax Act and the Stamp Duties Act to provide for the tax treatment for VCCs. Key features of the tax treatment are as follows:

- (i) *Corporate Income Tax treatment* – A VCC will be treated as a company for Corporate Income Tax purposes. An umbrella VCC will only be required to file a single Corporate Income Tax return with the Inland Revenue Authority of Singapore, regardless of the number of sub-funds it has. Deductions and allowances for expenses incurred by an umbrella VCC will be applied at the sub-fund level to determine the sub-fund’s chargeable income. An umbrella VCC will also be eligible for fund management tax incentives under sections 13R (Singapore Resident Fund Scheme) and 13X (Enhanced Tier Fund Scheme) of the Income Tax Act. Further, where applicable, an umbrella VCC may enjoy the start-up or partial tax exemption regardless of the number of sub-funds it has.
- (ii) *Goods and services tax (“GST”) treatment* – GST will be applicable at the sub-fund level. GST accounting and registration have to be done separately by each sub-fund that is liable for GST registration because each sub-fund makes independent sale and purchase decisions based on its respective investment mandate.
- (iii) *Stamp duty treatment* – Stamp duty is levied at the sub-fund level because each sub-fund may enter into contracts relating to the transfer

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of immovable property and shares. For example, stamp duty will be levied on an instrument that transfers the interest in property and shares between sub-funds.

Receivership and Insolvency provisions for VCCs

The VCC Act contains provisions on the receivership and winding up of VCCs and their sub-funds. These provisions are adapted from the Companies Act (“CA”). The Insolvency, Restructuring and Dissolution Act 2018 (“IRDA”), which has been passed by Parliament but has yet to come into force, will consolidate all personal and corporate insolvency and debt structuring laws under one statute. When the IRDA comes into force, the insolvency provisions of the CA will be repealed. The Bill will amend the VCC Act so that the insolvency framework for VCCs and their sub-funds will make reference to the relevant provisions of the IRDA instead of the CA.

Click on the following links to read more:

- [Second Reading Speech by Ms Indranee Rajah, Second Minister for Finance, relating to the Variable Capital Companies \(Miscellaneous Amendments\) Bill](#) (made available on the MAS website at www.mas.gov.sg)
- [Variable Capital Companies \(Miscellaneous Amendments\) Bill](#) (made available on the Parliament of Singapore website at www.parliament.gov.sg)

New Work Injury Compensation Framework to Take Effect on 1 September 2020

The Work Injury Compensation Bill, introduced in Parliament on 5 August 2019, was passed on 3 September 2019. The new Work Injury Compensation Act 2019 (“WICA 2019”) will take effect on 1 September 2020.

The WICA 2019 repeals and re-enacts the current Work Injury Compensation Act with amendments to enhance the current work compensation regime in the following key aspects:

- Incentivising prevention of injuries from happening* – The WICA 2019 will promote information sharing whereby all employers’ policies and past claims are made available to all designated Work Injury Compensation (“WIC”) insurers. Employers with good safety records would be able to enjoy lower premiums. On the other hand, less safe employers who are faced with higher premiums will have greater commercial incentive to put in place measures to prevent their employees from getting injured in the first place.
- More expeditious process for employees to receive compensation* – The process for employees to receive compensation for injuries suffered arising out of and in the course of their employment may be expedited under the WICA 2019 as it provides for a deemed claim by an employee once an employer has notice of an accident, without an actual claim to be made. Further, processing of all claims will also be streamlined in that designated WIC insurers will process all insured

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claims under the WICA 2019. This is a departure from the current practice where temporary incapacity claims are processed by WIC insurers, while death and permanent incapacity claims are processed by the Ministry of Manpower (MOM).

- (iii) *Enhanced protection for employees* – The existing law requires employers to purchase WIC insurance for: (a) all manual employees; and (ii) non-manual employees (“NMEs”) in factories earning up to S\$1,6000 a month. The subsidiary legislation issued under the WICA will be revised to extend mandatory insurance to NMEs earning up to S\$2,100 per month, regardless of where they work. This is expected to take effect on 1 April 2020. The NME monthly salary threshold will be raised to S\$2,600 on 1 April 2021.

Compensation limits will also be updated to keep pace with wage growth and healthcare cost. The compensation limits for death and permanent incapacity will be increased by about 10% to S\$225,000 and S\$289,000, respectively. The compensation limit for medical expenses will be increased by about 25%, from the current S\$36,000 to S\$45,000. These changes are expected to be in force on 1 January 2020.

Click on the following links to read more:

- [New Work Injury Compensation Act 2019 for Faster Claims, Fairer Compensation and Fewer Injuries](#) (made available on the MOM website at www.mom.gov.sg)
- [Second Reading Speech by Mr Zaqy Mohamad, Minister of State for Manpower relating to the Work Injury Compensation Bill](#) (made available on the MOM website at www.mom.gov.sg)
- [Work Injury Compensation Bill](#) (made available on the Parliament of Singapore website at www.parliament.gov.sg)

Application for New Digital Bank Licences Opened from 29 August 2019 to 31 December 2019

The Monetary Authority of Singapore (“MAS”) had previously announced its intention to issue up to five new digital bank licences. On 29 August 2019, MAS further announced that it would begin accepting applications for the new licences.

MAS has indicated that up to two of the licences will be digital full bank licences, and up to three of the licences will be digital wholesale bank licences. While the licences will be open to applicants that may not have an established track record in banking, MAS has imposed a series of criteria to ensure the quality and reliability of applicants. The criteria include:

- Minimum paid-up capital and ongoing capital funds requirements;
- Three-year track record in operating an existing business in the technology or e-commerce fields; and
- Fit and proper directors, shareholders and management.

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In addition, applicants are required to:

- (i) Provide clear value propositions on how they would serve customer needs and reach under-served segments of the Singapore market;
- (ii) Demonstrate that they have a sustainable digital banking business model;
- (iii) Submit a viable exit plan; and
- (iv) Have shareholders commit to providing a letter of responsibility and a letter of undertaking.

Interested parties have until 31 December 2019 to submit their applications.

Click on the following link to read more:

- [MAS Press Release on “MAS Invites Applications for New Digital Bank Licences”](#) (made available on the MAS website at www.mas.gov.sg)

New International Treaty on Mediation Inked in Singapore

On 7 August 2019, 46 States signed a new international arbitration treaty on mediation that will enable cross-border enforcement of mediated settlement agreements amongst the signatory countries. It provides businesses an option to resolve cross-border disputes, in addition to litigation and arbitration.

The United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention on Mediation ("**Convention**"), was adopted by consensus at the UN General Assembly on 20 December 2018 which also authorised the signing of the Convention in Singapore on 7 August 2019. Singapore was the first signatory of the Convention.

The Convention, the first UN treaty to be named after Singapore, applies to international commercial settlement agreements resulting from mediation. It will not apply to international settlement agreements that are concluded in the course of judicial or arbitral proceedings and which are enforceable as a court judgment or arbitral award. In addition, it will not also apply to settlement agreements concluded for personal, family or household purposes by one of the parties (a consumer), as well as settlement agreements relating to family, inheritance or employment law.

Click on the following link to read more:

- [Ministry of Law Press Release on “46 States Signed New International Treaty on Mediation”](#) (made available on the Ministry of Law website at www.minlaw.gov.sg)

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New Regulatory Framework for the Point-to-Point (P2P) Transport Sector

The Land Transport Authority (“LTA”) will be introducing a new regulatory framework for the point-to-point (“P2P”) passenger transport services from June 2020 following the passing of the Point-to-Point Passenger Transport Industry Bill on 6 August 2019.

The new regulatory framework will focus on the following areas:

- (i) *Licensing of bigger P2P service operators* – LTA will regulate P2P service operators based on the type of services provided, i.e. street-hail or ride-hail. Operators that offer both street-hail and ride-hail services will be required to hold two separate licenses. Under the new regime, street-hail service operators must be licensed and continue to have a minimum taxi fleet size of 800 vehicles. Ride-hail service operators with 800 or more vehicles on their platforms must also be licensed.
- (ii) *Commuter and driver safety* – LTA will be given the powers to set safety requirements on licensed operators, such as imposing accident and offence standards on licensed operators and requiring licensed operators to ensure that the vehicles they use pass the requisite vehicle inspections.
- (iii) *Development of an open and innovative P2P industry* – LTA will prohibit licensed operators from offering exclusive arrangements that prevent drivers from providing driving services for other operators, as these arrangements make it difficult for new operators to enter the market.

LTA will carry out further consultations with the industry to further refine operating standards and licensing requirements. Licence applications for street-hail and ride-hail service operators are expected to open in February 2020. The new regulatory framework will commence in June 2020.

Click on the following links to read more:

- [LTA & Public Transport Council \(PTC\) Joint Press Release on "New Regulatory Framework for the Point-to-Point \(P2P\) Transport Sector"](#) (made available on the LTA website at www.lta.gov.sg)
- [Point-to-Point Passenger Transport Industry Bill](#) (made available on the Parliament of Singapore website at www.parliament.gov.sg)

MAS Consultation on Requirements on Controls Against Market Abuse

On 5 August 2019, the Monetary Authority of Singapore (“MAS”) launched a public consultation exercise on the new requirements that MAS proposes to impose on financial institutions (“FIs”) in Singapore that undertake the regulated activity of dealing in capital markets products. These new requirements aim to improve controls and facilitate investigations into cases of market abuse such as market manipulation and insider trading, and to maintain a fair, orderly and transparent market.

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MAS has identified four areas where requirements will be enhanced:

- (i) *Client identification rule* – MAS proposes to introduce a client identification rule where FIs must establish arrangements with its clients to facilitate the provision of ultimate beneficial owner information to MAS or any other law enforcement agency, within five business days upon request.
- (ii) *Records of communication on orders and trades* – MAS proposes to require FIs to record all communication between their trading representatives and the person instructing the orders and trades (“O&T”) in customers’ account for any capital market products, even if such communication does not result in an actual transaction.
- (iii) *Client device identification* – Due to the prevalence of self-directed trading via mobile applications, MAS highlights that it is necessary for FIs to enhance their capabilities to capture information that identify the individuals who place orders via self-directed trading avenues. Each mobile application generates an alphanumeric identifier that is unique to the device on which the application is installed (“Device ID”). MAS proposes to impose a new requirement for all FIs to capture and record the Device ID for O&T executed via mobile trading applications.
- (iv) *Register of cash and third-party payments* – MAS highlighted that a number of FIs currently allow payments in trading accounts to be made in cash and/or by a person who is not the account holder. MAS proposes to require FIs to maintain a centralised, electronic register of all payments received in cash or from third parties by the FIs into the customers’ trading accounts.

The proposed requirements will be set out in a new Notice on Controls against Market Abuse.

The consultation exercise ended on 5 September 2019.

Click on the following link to read more:

- [Consultation Paper on Requirements on Controls Against Market Abuse](#) (made available on the MAS website at www.mas.gov.sg)

CaseBytes

Defending an Application to Reverse an Arbitral Decision

In *BXY and others v BXX and others* [2019] SGHC(I) 11, the Singapore International Commercial Court (“SICC”) was faced with application to reverse a decision of an arbitral tribunal. The application was dismissed by the SICC.

The Plaintiffs, who were the respondents in the arbitration, had unsuccessfully applied to the tribunal for an order that the First Defendant, a claimant in the arbitration, be struck out as a party on the ground that it

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had assigned all its rights in the agreement containing the arbitration clause to the Second Defendant and was thus not a proper party to the arbitration.

The SICC held that the Plaintiffs had brought the application outside of the 30-day deadline from the date of notice of the tribunal's ruling, as provided under the International Arbitration Act and the UNCITRAL Model Law on International Commercial Arbitration (Model Law). The SICC further held that it did not have the power to extend the time for the Plaintiff's application. In any event, the court was willing to find that the First Defendant had not assigned its rights and was in fact a proper party to the arbitration.

The Defendants were successfully represented before the SICC by [Francis Xavier SC](#), Edwin Tan, Tee Su Mien and Ang Tze Phern from the [Commercial Litigation Practice](#).

Enforcement of Payments on Basis of Repayment Documents

In *Tong Seak Kan and another v Jaya Sudhir a/l Jayaram* [2019] SGHC 190, the Plaintiffs brought claims against the Defendant for the payment of sums amounting to more than US\$8 million. The High Court allowed the full claims, awarding judgment in favour of the Plaintiffs.

The Plaintiffs wished to secure the long-term supply of LNG for Macau from Indonesia. The Defendant was engaged pursuant to a consultancy agreement ("**Consultancy Agreement**") to facilitate this. In the course of the engagement, and at the request of the Defendant, the Plaintiffs advanced large sums of money as advances toward the consultancy fee, which the Defendant ostensibly used to pay expenses in relation to his engagement. Under the Consultancy Agreement, these expenses were to be borne by him.

The Defendant eventually entered into several repayment documents acknowledging his liability to repay the advances in the event he was unable to procure the long-term supply of LNG. He failed to do and when the Plaintiffs sought repayment, raised multiple defences. One of them was that he had been tricked into signing the repayment documents and that the documents were a sham.

The facts were complex and after a trial over 11 days, the Singapore High Court found the defences to be unmeritorious and held that the repayment documents were genuine and the Defendant had indeed agreed to be liable for the sums claimed.

The Plaintiffs were successfully represented by [Harish Kumar](#), [Jonathan Toh](#) and Josephine Chee from the [Commercial Litigation Practice](#).

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Deals

Acquisition of Issued and Paid-up Share Capital in Yongjin Holdings

[Norman Ho](#), [Benjamin Tay](#), [Loh Chun Kiat](#) and [Cindy Quek](#) from the [Corporate Real Estate Practice](#) and [Mergers & Acquisitions Practice](#) acted for Arch Capital Management, a Hong Kong-based fund manager, on the approximately S\$210 million (US\$151.5m) acquisition, on behalf of a German fund, of the entire issued and paid-up share capital in Yongjin Holdings, the registered proprietor of Anson House, the property situated at 72 Anson Road, Singapore. The team also assisted in the financing of the transaction.

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Acquisition of Shares in CITIC Envirotech

[Danny Lim](#) from the [Capital Markets / Mergers & Acquisitions Practice](#) advised CITIC Environment (International) on the acquisition of shares in CITIC Envirotech from its other consortium partners. The CITIC Envirotech group is a leading membrane-based integrated environmental solutions provider specialising in water and wastewater treatment, water supply and recycling.

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Acquisition of Ophir-Rochor Commercial

[Norman Ho](#), [Sandy Foo](#), [Benjamin Tay](#) and [Favian Tan](#) from the [Corporate Real Estate Practice](#) and [Capital Markets / Mergers & Acquisitions Practice](#) are acting for Gaw Capital Partners on the approximately S\$1.6 billion (US\$1.16b) acquisition by a consortium, comprising Gaw Capital Partners and Allianz Real Estate, of the entire issued and paid-up share capital of Ophir-Rochor Commercial, a wholly-owned subsidiary of M+S. M+S owns the property situated at 3 and 7 Fraser Street, Singapore known as Duo Tower and Duo Galleria, respectively.

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Series A Fundraising in Oneberry Technologies

[Terence Quek](#) from the [Corporate Commercial Practice](#) acted for Oneberry Technologies, a leading provider in remote surveillance solutions, on its S\$30 million Series A fundraising round with CMIA Capital Partners. Oneberry Technologies is based in Singapore with a presence in Indonesia, Thailand and the Philippines, and had been self-funded. This is the company's first fundraising.

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Events

FTAs, Preferential Treatment and How to Do Business – Are you Getting the Right COO Based on Proper RVC Calculations?

On 20 August 2019, the [Competition & Antitrust and Trade Practice](#) organised a seminar titled “FTAs, Preferential Treatment and How to Do Business – Are you Getting the Right COO Based on Proper RVC Calculations?”.

Singapore is a party to many trade agreements, both bilateral as well as regional trade agreements. Trade agreements are entered into to ensure lower tariffs, preferential treatment, faster movement and clearance for goods, and freer movement of employees, amongst others. While the benefits of taking advantage of trade agreements are boundless, there could also be dire consequences if trade agreements are not properly reviewed and interpreted.

[Kala Anandarajah](#), Head of the Competition & Antitrust and Trade Practice, and [Tanya Tang](#), Chief Economic and Policy Advisor looked at the issues and challenges that parties to trade agreements face, and provided insights on how to deal with these challenges.

Enforcing Non-compete, Non-solicitation, Non-disparagement and Confidentiality Clauses

On 7 August 2019, the [Employment & Benefits Practice](#) organised a seminar titled “Enforcing Non-compete, Non-solicitation, Non-disparagement and Confidentiality Clauses”.

The severance of an employment relationship usually gives rise to concerns for employers whose employees left on bad terms or join a competitor. The concerns may relate to the possibility of the former employees enticing their former colleagues to join them, or resorting to the social media to disparage the previous employers. The employers would also want to protect their confidential information or trade secrets when their employees leave. [Jonathan Yuen](#), Head of the Employment & Benefits (Disputes) Practice and [Desmond Wee](#), Head of the Employment & Benefits Practice discussed the importance of having a robust employment framework to deal with these issues. They also shared practical tips on how to protect a company’s valuable and proprietary information/data from vindictive and malicious employees.

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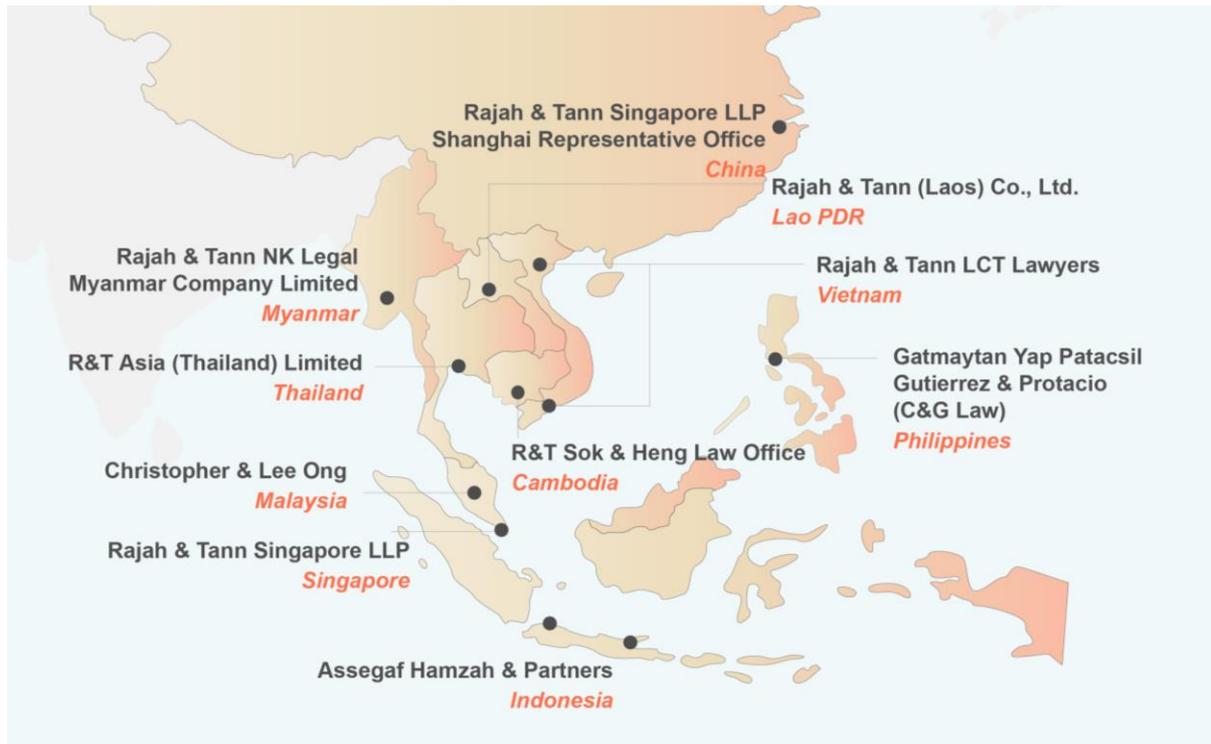
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Our Regional Presence



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Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

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